

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----  
MICHAEL HILL,

Petitioner,

v.

C. HOLINKA,

Respondent.  
-----

ORDER

10-cv-65-bbc

I dismissed petitioner Michael Hill’s petition for a writ of habeas corpus brought under 28 U.S.C. § 2241 on the ground that petitioner could not show that relief was foreclosed under 28 U.S.C. § 2255. (Section 2255(e) makes § 2255 “the exclusive remedy” for contesting the validity of a conviction unless it is “inadequate or ineffective to test the legality of [petitioner’s] detention.” Collins v. Holinka, 510 F.3d 666, 667 (7th Cir. 2007).) The Court of Appeals for the Seventh Circuit vacated the judgment in this case, explaining that

We find that Hill has made a substantial showing of the denial of a constitutional right as to as to [sic] whether he could be sentenced as an armed career criminal on the basis of his prior convictions for aggravated battery, and that Hill has never filed a § 2255 motion in his district of conviction, the Northern District of Illinois.

Hill v. Holinka, slip op., case no. 10-2043 (7th Cir. July 27, 2010). The court of appeals vacated the judgment and remanded “in order to give the district court the opportunity to consider transferring the case to the Northern District of Illinois.” Id.

The court of appeals’ decision leaves an important question unanswered. Should the action be converted into a motion brought under § 2255 and transferred on the ground that § 2255 actions must be litigated where the prisoner was sentenced, al-Marri v. Rumsfeld, 360 F.3d 707, 710 (7th Cir. 2004), or should the action be transferred first, to allow the sentencing judge to determine whether the action can be converted?

The court of appeals has made it clear that a district court must not convert a proceeding brought under § 2241 into one brought under § 2255 even when it appears that the action should have been filed under § 2255, because § 2241 “authorize[s] distinct forms of relief in specific courts” and “[p]ersons who initiate independent litigation are entitled to have it resolved under the grant of authority they choose to invoke.” Collins, 510 F.3d at 667. This holding would suggest that it would be inappropriate to simply convert this case into one brought under § 2255, especially because petitioner has never asked to have the action converted.

On the other hand, in this case the court of appeals implicitly held that relief under § 2241 is not available (because relief under § 2255 *is*), which means that it would make no sense to continue treating this case as one proceeding under § 2241. Moreover, there would

be no basis for transferring the case away from this district if the case were proceeding under § 2241 because this is the district of his confinement and thus, the proper venue. al-Marri, 360 F.3d at 710.

Therefore, I will treat this action as one arising under § 2255 and will transfer it to the United States District Court for the Northern District of Illinois, where it should have been brought in the first place. Id. (Plaintiff has filed a motion for appointment of counsel under 18 U.S.C. § 3006A. Because I am transferring the case, I will take no action on that motion. The receiving court will have an opportunity to decide whether appointment of counsel is appropriate.)

#### ORDER

IT IS ORDERED that petitioner Michael Hill's petition for a writ of habeas corpus under 28 U.S.C. § 2241 is construed as a request for relief under 28 U.S.C. § 2255 and TRANSFERRED to the United States District Court for the Northern District of Illinois. The clerk of court is directed to transmit the case file to the United States District Court for

the Northern District of Illinois.

Entered this 30th day of September, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge